

held by trustees for its benefit, and was by them afterwards sold, and the proceeds of sale applied to the payment of other debts than those of the complainants.

No sale was made by the sheriff under his levy, and things remained in this state until December, 1845, when the bill was filed in this cause by the complainants. At the time these drafts were accepted by the canal company, a receipt was signed by William Harness, in which he said, "I accept the same," (the accepted drafts,) "as full payment of the lands of William, Joseph and Hannah Harness," (the complainants,) "in Alleghany county, Maryland, condemned by inquisition at the instance of said canal company, and affirmed by the court of that county, at October term, 1838." The bill alleged the insolvency of the company; that the condemned lands were the complainants' only resource for the payment of their claim; and, that these would be rendered worthless by the passage of the canal through them, which, however, would be done, unless they were aided by an injunction. The late Chancellor granted the injunction, which, on the coming in of the answers, was continued till the hearing.]

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THE CHANCELLOR:

Though respectable authorities may be found for the principle, that the right of eminent domain inherent in the sovereign power, authorizes the government to take and appropriate private property for public uses, without making compensation to the owner, unless there is some provision in the constitution restrictive of the power, I am fully persuaded, that no such principle can be maintained in this state. The decisions of the court of last resort here, as I understand them, clearly forbid the exercise of any such power.

In commenting upon the act of 1825, chapter 190, which proposed to abolish one corporation and to transfer its franchises and property to another, without the consent of the former, the Court of Appeals declared, that independently of the constitution of the United States, prohibiting the states from passing laws impairing the obligation of contracts, there